

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHIRLEY V. REMMERT,

No. C 08-01644 CRB

Petitioner,

v.

**ORDER GRANTING IFP AND
DISMISSING PETITION FOR
FAILURE TO STATE A CLAIM**

SHERIFF GREG MUNKS,

Respondent.

Now pending before the Court is petitioner's application to proceed *in forma pauperis* ("IFP"). A court may authorize a litigant to prosecute an action in federal court without prepayment of fees or security if the litigant submits an affidavit showing that he or she is unable to pay such fees or give security therefor. See 28 U.S.C. § 1915(a). Petitioner has submitted the required documentation, and it is evident from her application that her assets and income are insufficient to enable plaintiff to prosecute the action.

Viewing petitioner's application in isolation, it appears that she should be allowed to proceed IFP. A court is under a continuing duty, however, to dismiss a case whenever it determines that the action "(I) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(I)-- (iii).

Remmert's petition arises out of her June 27, 2007 conviction and sentence.

1 Remmert alleges that she appealed the conviction. Indeed, she has submitted portions of her
2 appellant brief which was filed on January 17, 2008 with the Appellate Department of the
3 Superior Court of San Mateo County. She also alleges that the grounds for her appeal before
4 the state Appellate Department are the same as those she is raising in the pending habeas
5 petition before this Court. Remmert does not allege that the state court has ruled on her
6 appeal; indeed, she specifically represents that her appeal is currently pending in the
7 Appellate Department of the Superior Court of San Mateo.

8 Remmert's petition must be dismissed because she has not exhausted her state
9 remedies. To properly exhaust her state remedies she must use California's established
10 review procedures before she presents her claims to a federal court. See O'Sullivan v.
11 Boerckel, 526 U.S. 838, 845 (1999). She has not fully used those procedures as the state
12 Appellate Department of the Superior Court of San Mateo has not yet ruled on her appeal. It
13 is thus premature for this Court to proceed. Remmert's filing of state habeas petitions which
14 were denied does not excuse her obligation to comply with the regular appellate process.
15 Accordingly, the petition and Remmert's several pending motions are DISMISSED.

16 **IT IS SO ORDERED.**

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18 Dated: May 12, 2008



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SHIRLEY,

Case Number: CV08-01644 CRB

Plaintiff,

CERTIFICATE OF SERVICE

v.

REMMERT-V-GREG MUNKS et al,

Defendant.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 12, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Shirley V. Remmert
990 Berkeley Avenue
Menlo Park, CA 94025

Dated: May 12, 2008

Richard W. Wieking, Clerk
By: Barbara Espinoza, Deputy Clerk